

## 25 CFR Part 573

### 25 CFR Part 573 – Compliance and Enforcement

- 573.1 Scope.
- 573.2 When may a letter of concern be issued?
- 573.3 Notice of violation.
- 573.4 When may the Chair issue an order of temporary closure?
- 573.5 When does an enforcement action become final agency action?

**Authority:** 25 U.S.C. 2706(b)(10); 25 U.S.C. 2713; E.O. 13175, 65 FR 67249, 3 CFR, 2000 Comp., p.304.

**Source:** 58 FR 5844 (Jan. 22, 1993), 77 FR 47518, unless otherwise noted.

#### **§ 573.1 What is the purpose of this part?**

Voluntary compliance is the goal of the Commission. Voluntary compliance is achieved when a tribe and the NIGC staff are able to resolve any potential enforcement issues prior to the Chair issuing an enforcement action. This part sets forth efforts for achieving voluntary compliance and enforcement action when voluntary compliance is not forthcoming. While this part is intended to garner voluntary compliance through a graduated enforcement process, there may be circumstances under which a graduated enforcement process is omitted and an enforcement action must be taken. This part also sets forth general rules governing the Commission's enforcement of the Act, this chapter, and tribal ordinances and resolutions approved by the Chair under part 522 of this chapter. Civil fines in connection with notice of violation issued under this part are addressed in part 575 of this chapter.

#### **§ 573.2 When may a letter of concern be issued?**

(a) Prior to the Chair taking an enforcement action, a letter of concern may be provided to the respondent by NIGC staff, detailing concerns regarding the respondent's compliance with the Act, this chapter, or any tribal ordinance or resolution approved by the Chair under part 522 of this chapter. A letter of concern describes the available facts and information, includes a preliminary assessment regarding the incident or condition, and indicates that it may be a violation.

(b) Action under this section does not constitute agency action.

(c) A letter of concern issued under paragraph (b) of this section must provide a time period for the respondent to respond. If the letter of concern is resolved without enforcement action, NIGC staff may send an investigation completion letter pursuant to § 571.4 of this chapter.

(d) The Chair's discretion to take an enforcement action is not limited or constrained in any way by this section. When the Chair takes enforcement action before a letter of concern is issued, the enforcement action must state the reasons for moving directly to an enforcement action without first issuing a letter of concern.

#### **§ 573.3 When may the Chair issue a notice of violation?**

(a) The Chair may issue a notice of violation to any person for violations of any provision of the Act or this chapter, or of any tribal ordinance or resolution approved by the Chair under part 522 of this chapter.

(b) A notice of violation shall contain:

- (1) A citation to the federal or tribal requirement that has been or is being violated;
- (2) A description of the circumstances surrounding the violation, set forth in common and concise language;
- (3) Measures required to correct the violation;
- (4) A reasonable time for correction, if the respondent cannot take measures to correct the violation immediately; and
- (5) Notice of rights of appeal.

**§ 573.4 When may the Chair issue an order of temporary closure?**

(a) *When an order of temporary closure may issue.* Simultaneously with or subsequently to the issuance of a notice of violation under § 573.3, the Chair may issue an order of temporary closure of all or part of an Indian gaming operation if one or more of the following substantial violations are present:

- (1) The respondent fails to correct violations within:
  - (i) The time permitted in a notice of violation; or
  - (ii) A reasonable time after a tribe provides notice of a violation.
- (2) A gaming operation fails to pay the annual fee required by 25 CFR part 514.
- (3) A gaming operation operates for business without a tribal ordinance or resolution that the Chair has approved under part 522 of this chapter.
- (4) A gaming operation operates for business without a license from a tribe, in violation of part 522 or part 559 of this chapter.
- (5) A gaming operation operates for business without either background investigations having been completed for, or tribal licenses granted to, all key employees and primary management officials, as provided in §558.3(b) of this chapter.
- (6) There is clear and convincing evidence that a gaming operation defrauds a tribe.
- (7) A management contractor operates for business without a contract that the Chair has approved under part 533 of this chapter.
- (8) Any person knowingly submits false or misleading information to the Commission or a tribe in response to any provision of the Act, this chapter, or a tribal ordinance or resolution that the Chair has approved under part 522 of this chapter.
- (9) A gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of § 571.5 or § 571.6 of this chapter, or of a tribal ordinance or resolution approved by the Chair under part 522 of this chapter.
- (10) A tribe fails to suspend a license upon notification by the Commission that a primary management official or key employee does not meet the standards for employment contained in §558.2 of this chapter, in violation of §558.5 of this chapter.

(11) A gaming operation operates class III games in the absence of a tribal-state compact that is in effect, in violation of 25 U.S.C. 2710(d).

(12) A gaming operation's facility is constructed, maintained, or operated in a manner that threatens the environment or the public health and safety, in violation of a tribal ordinance or resolution approved by the Chair under part 522 of this chapter.

(13) A gaming facility operates on Indian lands not eligible for gaming under the Indian Gaming Regulatory Act.

(b) *Order effective upon service.* The operator of an Indian gaming operation shall close the operation upon service of an order of temporary closure, unless the order provides otherwise.

(c) *Informal expedited review.* Within seven (7) days after service of an order of temporary closure, the respondent may request, orally or in writing, informal expedited review by the Chair.

(1) The Chair shall complete the expedited review provided for by this paragraph within two (2) days after his or her receipt of a timely request.

(2) The Chair shall, within two (2) days after the expedited review provided for by this paragraph:

(i) Decide whether to continue an order of temporary closure; and

(ii) Provide the respondent with an explanation of the basis for the decision.

(3) Whether or not a respondent seeks informal expedited review under this paragraph, within thirty (30) days after the Chair serves an order of temporary closure the respondent may appeal the order to the Commission under part 577 of this chapter. Otherwise, the order shall remain in effect unless rescinded by the Chair for good cause.

### **§ 573.5 When does an enforcement action become final agency action?**

An enforcement action shall become final agency action and a final order of the Commission when:

(a) A respondent fails to appeal the enforcement action as provided for in part 577 of this chapter and does not enter into a settlement agreement resolving the matter in its entirety; or

(b) A respondent enters into a settlement agreement resolving the matter in its entirety at any time after the issuance of the enforcement action.